REMARKS

In response to the office action dated December 31, 2007, please consider the following remarks. Reconsideration of the present application is respectfully requested.

Claims 1-9 stand rejected under §103(a) based upon a combination of reference U in view of reference V. The rejections of some of the dependent claims also identify other references in addition to references U and V. Applicant respectfully disagrees since reference U neither shows what the office action asserts nor what Applicant has claimed. In particular, the office action asserts that "reference U teaches providing a state-governed fully-insured health insurance policy to a group of employees. . .". Applicant respectfully disagrees. In particular, the cited document nowhere states that self funded plans are state governed. In fact, in the Sixth bullet under the sub-heading "Self-Funding Lowers Costs" the document specifically acknowledges that "self-funded programs are regulated at the federal level." In addition, Applicant's claims are directed to a "fully-insured" product, which is the antithesis of a self funded plan. Furthermore, not only is the term "fully-insured" a term of art in the insurance industry whose definition was ignored by the Examiner, but Applicant's explicit definition in the specification was also ignored. Applicant's specification explicitly states that "[T]he term 'fully-insured' is a term of art in the insurance industry meaning generally that in exchange for premium payments, which will be paid at least partially by the employer, coverage according to the insurance contract is provided for insured employees." It is elementary that an employer can not form a contract of any kind with themselves, nor pay premium payments to themselves to provide coverage for their employees, nor take a tax deduction for the non-existent premiums. So that Applicant finally gets the claims properly examined according to the scope that they were originally submitted, Applicant has relieved the Examiner of the burden of reading the specification or interpreting the claim language according to how one with ordinary skill in the art of the insurance industry would interpret Applicant's claim terms by amending the independent claims to explicitly make clear, again, what the claims cover. The claimed invention is about actual insurance products, not employers that forgo purchasing insurance and instead pay claims themselves as part of some kind of self funded plan. The reference teaches a federally governed self-funded plan strategy, whereas Applicant's claims are directed to a state-governed fully-insured plan. Since reference V and the other cited references fail to remedy

these defects, Applicant respectfully asserts that a proper prima facie case of obviousness under §103 has not been set forth. Therefore, Applicants respectfully request that all of the outstanding §103 rejections against claims 1-9 be withdrawn.

Applicant acknowledges that there likely exist some prior art document somewhere that correctly identifies that group health insurance products provided by most employers to cover their employees are federally governed plans. Applicant also acknowledges that is has been known to include supplemental health insurance plans (e.g., AFLAC) that are state-governed and fully insured to provide supplemental insurance to an employee beyond the coverage available under their base federally governed plan. However, only Applicant has recognized through insight that a federally governed plan which prohibits discriminatory action, could be coupled to a state governed fully-insured supplemental insurance plan to provide conditional benefits (discrimination) to employees based upon voluntary participation in a wellness program.

With regard to reference V., Applicant respectfully points out that it identifies itself as being "self-funded insurance" and hence federally governed. Thus, Applicant respectfully points out that neither of the two cited references U or V show or discuss any state-governed fully-insured health insurance product whatsoever. Therefore, Applicant again respectfully requests that all of the §103 rejections against claims 1-9 be withdrawn. The claims can not be interpreted consistent with common terminology in the insurance industry, consistent with the explicit definition provided in Applicants' specification and the explicit claim language and still be read upon to anything that refers to self funded coverage provided by an employer for their employees.

Claims 15-20 stand rejected under 35 USC §103(a) over reference G in view of reference F, with some of the dependent claims also citing other ones of the references of record. Applicant respectfully disagrees since reference G fails to show either what the office action asserts or what Applicant has claimed, and neither reference F nor the other cited references make up for this defect. There should be no dispute that reference G relates to a system for exchanging health care insurance information between an insurer and health care providers. However, no where does Spurgeon show or discuss processing a claim with respect to a State-governed fully-insured health insurance policy with regard to a conditional benefit for participation in a voluntary wellness program by an insured. In fact, and in contrary to the assertions made in the office action, neither the term of "wellness" nor any synonym thereof even

appear in the cited reference. Applicant invites the Examiner to review the cited reference for what it actually teaches, and not speculatively add to its disclosure with Applicant's claimed subject matter that is neither shown explicitly, implicitly nor inherently in the cited reference. Since Spurgeon fails to even contemplate a wellness program, it can not teach processing a claim for a conditional benefit with regard to an employee's voluntary participation in a wellness program as required by Applicant's claims. Therefore, reference G adds nothing to support the rejections against Applicant's claims, and for this reason alone, all of the §103 rejections against claims 15-20 should be withdrawn.

With regard to reference F, while it admittedly contemplates a wellness program, it only teaches the idea of identifying high risk individuals in a group and attempting to reduce claims among those high risk groups in part via the provision of a wellness program. But nowhere does Reference F either teach a State-governed fully-insured health insurance policy nor one in which a conditional benefit under that policy is conditioned upon voluntary participation in a wellness program. Merely providing a wellness program to at risk individuals does not satisfy the requirements of the claims. The office action acknowledges that Reference F fails to teach a state-governed fully-insured health insurance policy, but then goes on to assert that it does teach that limitation because it "could be" such an insurance policy. There should be no dispute that the MPEP and relevant case law forbid an Examiner from supplementing a reference with speculative "could be" information that is flatly not taught by the reference in order to support a rejection of any kind. Thus, even when combined, the cited references fail to teach all of the features required by Applicant's claims. Therefore, Applicants respectfully request that the outstanding §103(a) rejections against claims 15-20 be withdrawn.

The office action makes a startling assertion that contradicts other statements in the Office Action and is so utterly lacking in cogency as to deserve comment. In particular, the office action states that "[T]he Examiner also interprets that all insurance policies are ERISA governed health insurance policy." Unfortunately, that statement fails to recognize the current state of the law in the United States, fails to identify what supposed thing was interpreted in order to arrive at that conclusion, and demonstrates a worrisome misunderstanding of both the health insurance industry generally and the claimed invention specifically. In order to reduce issues for appeal, Applicant invites the Examiner to identify what was interpreted to reach the conclusion asserted in the office action, and expand the reasoning that lead to that conclusion. Is

the Examiner really asserting that Applicant's claim to a state-governed fully-insured health insurance policy is being interpreted as not being state governed at all, but instead being governed at the Federal level under ERISA? Please explain.

Applicant again notes that the web site address identified in PTO-892 with regard to Reference U appears to be inaccurate. Applicant invites the Examiner to issue a corrected form to remedy this discrepancy.

This application is believed to be in condition for allowance of claims 1-9 and 15-20. However, if the Examiner believes that some minor additional clarification would put this application in even better condition for allowance, the Examiner is invited to contact the undersigned attorney at (812) 333-5355 in order to hasten the prosecution of this application.

Respectfully Submitted,

Michael B. McNeil
Reg. No. 35,949